

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

EVERETT ANDERSON
(Claimant-Respondent)

PRECEDENT
DISABILITY DECISION
No. P-D-7
Case No. D-67-332

S.S.A. No.

SOUTHERN CALIFORNIA EDISON COMPANY
(Self-Insurer-Appellant)

Voluntary Plan No.

DEPARTMENT OF EMPLOYMENT
(Respondent)

The self-insurer appealed from Referee's Decision No. BN-DC-4226 which dismissed its appeal to a referee because the ". . . purported appeal states no grounds or reasons on which a referee may take jurisdiction and on which a valid appeal may be filed"

STATEMENT OF FACTS

On May 26, 1967 a referee's hearing was conducted in San Bernardino, California to decide the question of whether the self-insurer or the state fund was liable for disability benefits due a former employee of the self-insurer-employer. On June 20, 1967, Referee's Decision No. BN-DC-2540 was issued. That decision held the self-insurer liable for disability benefits due the claimant and ordered reimbursement to the Disability Fund in accordance with section 2712 of the Unemployment Insurance Code. The self-insurer appealed to this board, and on September 20, 1967, we issued Disability Decision No. D-67-166 in which we affirmed the decision of the referee. No appeal has been filed from our decision and the decision has become final.

Subsequently, the department billed the self-insurer for benefits which the department had paid the claimant pending the settlement of the dispute as to liability. Benefits had been paid at the state rate through August 7, 1967.

On November 20, 1967 the self-insurer addressed a letter to the San Bernardino Referee Office in which it stated that it had received from the Department of Employment a Statement of Amount Due for benefits paid the claimant. In this letter was included the following statement:

"Upon our questioning this payment, the Department forwarded a copy of a Physician's Supplementary Certificate dated July 28, 1967. This certificate was not sent to our office until October 18, 1967. Since your decision and the Appeals Board's decision is based on facts in evidence at the hearing of May 28, 1967, we are protesting payment of any disability benefits beyond May 15, 1967, and have requested a refund of the amount demanded by the Department of Employment. . . ."

REASONS FOR DECISION

Section 2712 of the Unemployment Insurance Code provides as follows:

"2712. Whenever an individual is entitled to benefits under this part but there is a dispute whether such benefits are payable from the Disability Fund or from one or another voluntary plan, benefits shall be paid to the individual, pursuant to authorized regulations, from the source against which his claim was first filed, at not less than the Disability Fund rate, pending the determination of the dispute. The Appeals Board may prescribe by regulation the time, manner, method, and procedure through which such disputes may be determined by referees and the Appeals Board. If it is finally determined that the benefits should have been paid from one of said sources other than the one which paid the benefits, reimbursement shall be

promptly made from the Disability Fund or the voluntary plan, as the case may be, and the claimant shall be promptly paid the accumulated excess, if any, to which he is entitled. Reimbursement shall also be made to the extent of actual liability for benefits from one to another of the above mentioned sources when it is determined that benefits have been paid in error from one source which should have been paid from another."

The Unemployment Insurance Appeals Board has adopted rules providing for the procedure by which "disputes may be determined by referees and the Appeals Board." These rules appear in sections 5021(b) and 5021(c), Title 22, California Administrative Code, as follows:

"(b) A disputed coverage appeal may be filed by the claimant, the department, or voluntary plan insurer or self-insurer. A disputed coverage appeal shall be filed within thirty (30) days after the date of mailing or personal service of notice of denial of coverage. In disputed coverage cases in which notice of acceptance or denial is not furnished, an appeal may be filed after the expiration of 25 days, and within 55 days, from the date of mailing of the request that the department, voluntary plan insurer or self-insurer (as the case may be) pay benefits.

"(c) In the case of a denial of a disability claim by a voluntary plan insurer or self-insurer, and if no notice of denial is furnished, an appeal may be filed after the expiration of thirty (30) days, and within sixty (60) days, from the date of filing the claim."

A careful reading of section 2712 of the Unemployment Insurance Code shows, in our opinion, that it was the intent of the legislature, when a dispute arose as to what source was liable for disability benefits payable to a claimant, the source against which the claim was first filed would determine the claimant's eligibility for benefits and during the period the dispute was being adjudicated would pay benefits to the claimant.

It appears that the department followed the above cited sections of the Unemployment Insurance Code and Title 22, California Administrative Code, in this regard.

The question presented is whether the self-insurer has a right to appeal from the action taken by the Department of Employment in paying benefits to the claimant during the period the dispute as to coverage was pending.

Section 2712 of the Unemployment Insurance Code and the related regulations do not provide for a method of appeal from the action which may be taken in paying benefits by the source against which a claim was first filed.

Insofar as disability benefits are concerned, only sections 2707.2, 2707.4 and 2707.5 of the code provide for appeals:

"2707.2. The facts submitted by the employer pursuant to Section 2707.1 shall be considered and a determination made as to the eligibility of the claimant for benefits. The claimant shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of the notice of determination, whichever is later; provided, that said 10 days may be extended for good cause. The director shall be an interested party to any such appeal."

* * *

"2707.4. Upon receipt of the notice of the computation, the claimant so notified may protest the accuracy of the computation. Any such protest shall be considered and a determination as to the accuracy of the computation made thereon. The claimant submitting the protest shall be promptly notified of the determination and may appeal therefrom in the manner prescribed in Section 2707.2.

"2707.5. Any computation or determination provided for in this article may for good cause be reconsidered by the department prior to the filing of an appeal therefrom. Notification of any reconsidered determination shall be given promptly to the claimant, and the claimant may appeal therefrom in the manner provided herein for appeals from other determinations."

A careful reading of these sections of the code shows that only the claimant has the right to appeal from a determination issued by the Department of Employment. There is no provision in the Unemployment Insurance Code for a voluntary plan insurer or self-insurer to appeal from a determination made by the Department of Employment. In the absence of any specific authority, there is no inherent right afforded parties by virtue of any appeal provisions contained in the code (Benefit Decisions Nos. 5773 and 5643). Therefore, since the self-insurer had no right of appeal from the action taken by the department, its appeal to the referee was properly dismissed.

While we realize that there may be inequities resulting from our decision, we must apply the law as it is written. Any change or modification thereof is the prerogative of the legislature.

DECISION

The decision of the referee is affirmed. The self-insurer's appeal to the referee was properly dismissed.

Sacramento, California, April 3, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman
LOWELL NELSON
CLAUDE MINARD
ROBERT W. SIGG
JOHN B. WEISS